

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHELL S. SHERMAN AND KAREN L. SHERMAN

Appeal No. 98-2419
Application No. 08/675,193¹

ON BRIEF

Before CALVERT, PATE, and STAAB, Administrative Patent Judges.
CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed July 3, 1996.

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This is an appeal from the final rejection of claims 2 to 7, all the claims in the application.

The claims on appeal are drawn to a tool for extracting the base of a broken light bulb from a socket, and are reproduced in the appendix to appellants' brief.²

The references applied in the final rejection are:

Grinnell 1919	1,319,028	Oct. 14,
Wickbergh 28, 1933	1,899,489	Feb.
Hough 1984	4,485,701	Dec. 4,

The claims on appeal stand rejected under 35 U.S.C. § 103 on the following grounds:

- (1) Claims 2, 3 and 5 to 7, unpatentable over Hough in view of Wickbergh;
- (2) Claim 4, unpatentable over Hough in view of Wickbergh and Grinnell.

² In reading the claims on appellants' disclosure, we note that the language "each of said . . . flexible blade means" (claim 7, lines 15 to 18), while supported in the drawing, does not have antecedent basis in the specification, as required by 37 CFR § 1.75(d)(1). Also, the cross-hatching in Figs. 1 and 2 does not correspond to the disclosure of the handle as being made of hard rubber or plastic (cf. Hough Fig. 2).

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Considering first the rejection of claim 7, the only independent claim on appeal, the examiner states the basis of the rejection on page 2 of the final rejection (Paper No. 5) as follows:

Hough discloses all of the claimed subject matter except for having plural angular teeth on the blade means [15]. Wickbergh discloses plural angular teeth[5] on the blade means on the tip and sides of a tapered head [Figs. 3, 4 and 5]. It would have been obvious to one having ordinary skill in the art to form the blade/gripping means of Hough with plural angular teeth to better grip the workpiece as taught by Wickbergh. It would have been obvious to one having ordinary skill in the art to form the head of Hough as tapered to better grip the workpiece as taught by Wickbergh. It would have been obvious to one having ordinary skill in the art to form the device of Hough with gripping teeth/blade means on the tip of a driver member as well as on the sides to better grip the workpiece as taught by Wickbergh.

After fully considering the record in light of the arguments presented in appellants' brief and the examiner's answer, we conclude that the rejection will not be sustained. We agree with appellants that Wickbergh would not have suggested to one of ordinary skill in the art that the Hough device be modified in the manner proposed by the examiner.

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In using the Hough device, as disclosed at col. 3, lines 1 to 9, the flexible flange 15 is deformed as it is pushed into the base 21 of the broken light bulb, and then is further deformed as the handle 11 is rotated, whereby the base 21 can then be unscrewed from socket 22. Wickbergh, on the other hand, discloses the use of teeth 5 on a screwdriver blade so that the blade will not lift out of the screw head slot when the screwdriver is turned (page 2, lines 30 to 44). While the teeth of Wickbergh enhance gripping of the screw by the screwdriver, as

the examiner argues on page 5 of the answer, we do not consider that this disclosure would have taught or suggested to one of ordinary skill that such teeth be provided on the Hough tool, because the tools of Hough and Wickbergh grip in different ways. Thus, the tool of Hough is made of elastomeric material and (as noted above) grips the base 21 by deformation of that material, rather than by biting into the metal of the base in the manner that Wickbergh's teeth 5 would bite into the metal of the screw head. Appellants allude to this difference in their argument that "Wickbergh teaches how to prevent slipping between two relatively 'hard' members and both of the members of Hough are not 'hard'" (brief, page 8). Accordingly, we consider that the examiner's rejection was the result of impermissible hindsight based on knowledge gleaned from appellants' disclosure, rather than on knowledge within the level of ordinary skill at the time the claimed invention was made.

The rejection of claims 2, 3, 5 and 6, dependent on claim 7, will likewise not be sustained; also, since the Grinnell reference does not supply the deficiencies of the combination

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of Hough and Wickbergh, the rejection of claim 4 will not be sustained.

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Conclusion

The examiner's decision to reject claims 2 to 7 is
reversed.

Reversed

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
WILLIAM F. PATE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
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REVERSED

Prepared: September 27, 1999